

Supreme Court, U. S.

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 77-1108

1087

Elias Ewanco, Petitioner

v.

Commissioner of Patents, Respondent

Petition for a Writ of Certiorari to the United States Court of
Appeals for the District of Columbia Circuit

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Petition for a Writ of Certiorari to the United States Court
of Appeals for the District of Columbia Circuit

Petitioner prays that a writ of certiorari issue to review
judgement of the United States Court of Appeals for the Dis-
trict of Columbia Circuit entered on January 5, 1978.

CITATION TO OPINIONS BELOW

The opinion of the Patent Examiner's Answer mailed April
21, 1971 is in Appendix A. The opinion of the United States
Patent Board of Appeals Affirming the Examiner's Rejection
was mailed April 28, 1972 and is in Appendix B. The Memoran-
dum Opinion and Order by the United States District Judge for
the District of Columbia filed December 22, 1976 is in Appendix
C. The Opinion of the United States Court of Appeals for the
District of Columbia Circuit which sustained District Court by
judgement and supportive memorandum was filed January 5,
1978 and is in Appendix D hereto and is not published.

JURISDICTION

The judgement of the Court of Appeals with Memorandum was filed January 5, 1978. Petitioner has requested that motion for Stay of Mandate under Federal Rules of Appellate Procedure Rule 41 (b) be granted January 12, 1978.

The jurisdiction of this Court is invoked under 28 USC 1254 (1).

THE QUESTIONS PRESENTED

1. Has the Patent Office processed this application for Letters Patent throughout in compliance with the Code of Federal Regulations Manual of Patent Examining Procedure?
2. After finding that 35 USC 102 Novelty and Utility were present in plaintiffs application, why didn't the Judge take into account the error in rephraseing (Col. 1, Line 35) of the Fritz Patent by the Examiner's-in-chief in view of the meaning given in Exhibit No. 5 in the Transcript of Proceedings on page 28?
3. Because of the File Wrapper not being delivered to District Judges Chambers as requested, is it possible that this omission may have precipitated the presumptuous remarks on page 41 of the transcript of proceedings?
4. Why didn't the Judge of the Court of Appeals delve deeper into the facts as to Presumption of Correctness when 35 USC 102 was removed as a bar to obtaining Letters Patent?
5. Why is hindsight as a test of obviousness or non-obviousness of an invention condemned as the Supreme Court mandated in *Graham v. John Deere, et al.*, 383 U.S.1(1966)

and instituted by the Appeals Court by not recognizing the difference between prior art and the claims at issue?

6. Why isn't Claim 13 sufficient to overcome the references of Levey 1884 and Fritz 1923 where neither has claimed this joined subject matter?

7. Since the scope of this invention will cross all borders, couldn't this become episodic by its very nature?

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

The Constitutional provisions involved are Article 1, Section 8 right to discovery and the 14th Amendment Section 1, nor deny to any person within its jurisdiction the equal protection of the law which are in the United States Constitution.

The Statutes authorizing the Patent Office to issue patents in compliance with 35 USC 101 Inventions Patentable; 35 USC 102 Conditions for Patentability, novelty and loss of right to patent; 35 USC 103 Conditions for Patentability, non-obvious subject matter; 35 USC 112 Specification; 35 USC 145 Civil action to obtain patent; are in the Patent Laws issue of November 1965 United States Department of Commerce pages 15 thru 18 and page 27.

The Rules involved are Rule 31 (1), Rule 707.07 (j), Rule 809.02, Rule 808.01, Rule 818, Rule 904.01 (b) which are in the Code of Federal Regulations and can be found in the Manual of Patent Examining Procedure.

STATEMENT

Petitioner believes himself to be the original, first and sole inventor of a new deck of playing cards and claimed same with specification and Claim 13.

This contest, within the Patent Office, was finalized by the Examiner's-in-chief Board of Appeals Patent Office decision in Affirming the Patent Examiner's Rejection.

The complaint in the District Court for the District of Columbia was in the Channel of Ex Parte Review procedure and was chosen at this bifurcated point for continuation in seeking Letters Patent. Statute 35 USC 145 Civil action to obtain patent allows this court to review and adjudicate the Patent Office Board of Appeals opinion as the facts in the case may appear as long as a claim is involved from that decision. Claim 13 was in the Board of Appeals decision therefore the basis for Federal jurisdiction was in accord with the law. Claim 7 was canceled in the Appellants Brief Statement of the issues for review section.

REASONS FOR GRANTING WRIT

This petition raises substantial and important questions of administration and conduct of those responsible for implementing the rules in patent examining procedure. The denial of novelty in this stage was incomprehensible. In the District Court, the error of the Examiner's-in-chief was raised in the rephrasing of specifications. Novelty was allowed in this Court since it is obvious that this invention is 'something new'. The immediate Lower Court did not hold oral hearing and emphasis must be placed on the 'Presumption of Correctness' assumed by that Court.

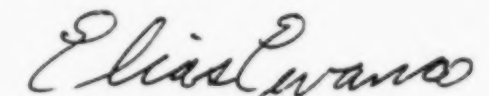
The importance of granting the writ of certiorari for review is necessary to show that the procedure for granting patents still works if the proper use of rules, already promulgated within the system, is used.

The transnational significance of this invention is possibly becoming an eternal standard pre-school learning tool for all who wish to learn or teach the basic symbols of the English language is important.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,



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